

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B02

PLR-120152-09

Date:

July 06, 2009

Legend

X =

Y =

State =

Trust1 =

Trust2 =

Trust3 =

Trust4 =

A =

Date1 =

Date2 =

Date3 =

Date4 =

Date5 =

Dear _____ :

This responds to a letter dated December 19, 2008, and subsequent correspondence, submitted on behalf of X by X's authorized representative, requesting a ruling under § 1362(f) of the Internal Revenue Code (the Code).

The information submitted states that X was incorporated under the laws of State on Date1. X elected to be an S corporation effective Date2. Until Date3, the stock of X was held entirely by Trust1, Trust2, and A, an individual. X represents that Trust1 and Trust2 are trusts treated under subpart E of part I of subchapter J of chapter 1 of the Code as being owned by an individual who is a citizen of the United States, and therefore Trust1 and Trust2 are eligible S corporation shareholders under § 1361(c)(2)(A). On Date3, Trust1 transferred its shares of X to Y, a limited liability company formed under the laws of State and owned by Trust3 and Trust4. Y is represented as being a partnership for federal tax purposes and therefore is not an eligible S corporation shareholder. X represents that Trust3 and Trust4 are trusts treated under subpart E of part I of subchapter J of chapter 1 of the Code as being owned by an individual who is a citizen of the United States, and therefore Trust3 and Trust4 are eligible S corporation shareholders under § 1361(c)(2)(A).

On or about Date4, X learned that its S corporation election terminated as a result of the transfer of X stock to Y, an ineligible S corporation shareholder. As corrective action, Y transferred its X stock to Trust4 on Date5.

X represents that X and X's shareholders have filed tax returns consistent with X being an S corporation. X further represents that the circumstances resulting in the termination of X's S corporation election were inadvertent and were not motivated by tax avoidance or retroactive tax planning. X and each person who was or is a shareholder of X at any time since Date3 agree to make adjustments (consistent with the treatment of X as an S corporation) that may be required by the Secretary with respect to such period.

Section 1362(f) provides that if (1) an election under § 1362(a) by a corporation (A) was not effective for the taxable year for which made (determined without regard to § 1362(b)(2)) by reason of a failure to meet the requirements of § 1361(b) or to obtain shareholder consents or (B) was terminated under § 1362(d)(2) or (3), (2) the Secretary determines that the circumstances resulting in the ineffectiveness or termination were inadvertent, (3) no later than a reasonable period of time after discovery of the circumstances resulting in the ineffectiveness or termination, steps were taken (A) so that the corporation is a small business corporation or (B) to acquire the shareholder consents, and (4) the corporation and each person who was a shareholder of the corporation at any time during the period specified pursuant to § 1362(f), agrees to make such adjustments (consistent with the treatment of the corporation as an S corporation) as may be required by the Secretary with respect to such period, then,

notwithstanding the circumstances resulting in the ineffectiveness or termination, the corporation will be treated as an S corporation during the period specified by the Secretary.

Based solely on the facts submitted and the representations made, we conclude that X's S corporation election terminated on Date3 because of the transfer of X stock to Y. We further conclude that the termination was inadvertent within the meaning of § 1362(f). Pursuant to the provisions of § 1362(f), X will be treated as continuing to be an S corporation on Date3 and thereafter, provided that X's S corporation election was valid and the election was not otherwise terminated under § 1362(d) for reasons not addressed in this letter.

Except as specifically set forth above, no opinion is expressed concerning the federal tax consequences of the facts described above under any other provision of the Code, including whether X was or is a small business corporation under § 1361(b), or whether Trust1, Trust2, Trust3 and Trust4 are eligible S corporation shareholders under § 1361(c)(2)(A).

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to X's authorized representative.

Sincerely,

Bradford R. Poston
Senior Counsel, Branch 2
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes